IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 209 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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I.T. & T LTD. - Petitioner(s)

Versus

SHREE DEVELOPERS PVT. LTD. - Respondent(s)

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Appearance :

MR ANSHIN H DESAI for Petitioner No(s).: 1.

MRS SWATI SOPARKAR for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE K.A.PUJ

Date : 06/07/2005

ORAL JUDGMENT

1. The petitioner, namely, I.T. & T. Limited has filed this petition under Section 433 read with Section 434 of the Companies Act, 1956 for winding up of the respondent Company on the ground that the respondent Company has failed to discharge its financial liability towards the petitioner.

2. It is the case of the petitioner that on 29.12.2000, a loan cum pledge agreement between the respondent Company, East West Polyart Limited, Satellite Management Services Private Limited, Ideal Petro Products Limited on the one hand and the petitioner Company on the other hand was executed, pursuant to which the petitioner gave a deposit of Rs.3 Crores with the respondent for a period of 90 days @ 17% p.a. The respondent Company and other guarantors have pledged

6,25,000/- shares of Shree Rama Multi-tech Limited with the petitioner. The respondent has also issued a Demand Promissory Note dated 29.12.2000, promising to pay on order at the expiry of 90 days, the sum of Rs. 3 Crores together with interest @ 17% p.a. The said transaction was also authorised by the Board of Directors of the respondent Company vide Resolution dated 26.12.2000. On 03.03.2001, the respondent issued a letter requesting the petitioner that the deposit be renewed for a period of 182 days from the date of expiry of the same i.e. 29.03.2001. Accordingly, the said deposit was agreed to be renewed. The respondent made a payment of Rs. 3 Crores to the petitioner and the petitioner thereafter agreed to make the deposit of Rs. 3 Crores at a later date, by renewing the deposit on the terms of the Loan cum Pledge Agreement dated 29.12.2000.

3. It is also the case of the petitioner that on

04.04.2001, one Khandwala Securities Limited, the merchant bankers of the respondent issued a letter on behalf of the respondent confirming the ICD transaction of renewing the deposit for Rs. 3 Crores for a tenure of 90 days. On 06.07.2001, the respondent acting through their merchant bankers, proposed the renewal of the deposit of Rs. 3 Crores for a further period of 90 days. Accordingly, the deposit of Rs. 3 Crores made under the Loan Cum Pledge Agreement was renewed for a further period of 90 days upto 07.10.2001. On 19.10.2001, the merchant banker of the respondent met with one Mr. C.S. Bhandari, Finance Controller of the petitioner Company for settling of the deposit repayment pertaining to the respondent and Mr. Paresh Khandwala assured the petitioner that the said repayment of the deposit would be made on 07.11.2001 and the interest would be repaid by 31.12.2001. A cheque dated 07.11.2001 towards repayment of the principal amount of the deposit of Rs. 3 Crore was

also presented to the petitioner. Thereafter, on 31.10.2001, the petitioner informed M/s. Khandwala Finance Limited. Confirming the payment schedule agreed between the respondent and the petitioner wherein it was agreed that the respondent shall repay Rs. 3 Crores paid as deposit under the Loan and Pledge Agreement by 07.11.2001 and the interest amount thereon, 17% p.a. would be paid by 31.12.2001. Thereafter, on 06.11.2001, the petitioner issued letter to the respondent through its merchant bankers stating that the petitioner would be presenting the cheque dated 07.11.2001 on 14.11.2001. However, the said cheque was not deposited pursuant to the verbal request. Thereafter, despite several promises by the respondent, the petitioner has not received any payment as agreed by the respondent. Hence, on 21.12.2001, the petitioner issued a letter to the merchant banker of the respondent stating that relying upon the assurance of the respondent, the repayment of the deposit together with interest

would be made on or before 22.12.2001 and if it is not made, the cheque will be deposited on 24.12.2001. On deposit of the said cheque, the cheque was returned dishonored. Thereafter, statutory notice was issued by the petitioner along with others on 03.01.2002. Despite the issuance of statutory notice, the payment was not made and hence, the petitioner has filed the present petition and also filed criminal complaint under Section 138 of the Negotiable Instruments Act for return of the cheques.

4. This Court has issued notice on 17.12.2002. On receipt of the notice, an appearance was filed on behalf of the respondent Company and affidavit-in-reply was filed on 05.03.2003. Several contentions were raised in the reply denying the liability. The petitioner has also filed its rejoinder on 02.04.2003. An additional affidavit was filed by the respondent Company on 31.07.2003 whereby the Balance-sheets and profit and loss

accounts of three years, namely, year ending on 1999 – 2000, 2000 – 2001 and 2001 – 2002 were placed on record.

5. On 06.05.2003, after hearing the learned advocates appearing for the parties, this Court has passed an order recording the statement of Mr. S.N. Soparkar, learned advocate appearing for the respondent Company that M/s. Khandwala Securities Limited has informed him that an amount of Rs. 25 Lacs will be paid to the petitioner by 31.05.2003 and by reopening of Courts after summer vacation, his client will come forward with a schedule for payment of the rest of the amount. In view of the said statement, the matter was adjourned to 27.06.2003. Since the amount has not been paid as per the statement made before the Court on 06.05.2003, the petition was admitted on 10.07.2003. However, the order of advertisement was deferred. On 05.09.2003, after hearing the learned advocates appearing for the parties, the

Court has passed an order wherein it is observed that because of failure in the assurance given by another Company, namely, Khandwala Securities & Jayantilal Khandwala & Sons Pvt. Ltd., the respondent was facing difficulties as it was going concern. The Court thereafter passed the order with regard to advertisement and accordingly, the petitioner was directed to publish the advertisement in 'Sambhav' – Gujarati daily and 'Indian Express' – English daily both of Ahmedabad editions on or before 25.09.2003 fixing the final hearing date on 15.10.2003.

6. Pursuant to the aforesaid order, the advertisement appeared in the aforesaid two newspapers on 24.09.2003 and affidavit of publication was also filed along with the newspaper cuttings.

7. The petition was thereafter listed for final hearing on number of occasions. However, the same could not be taken up for hearing for quite a long

time.

8. Today when the matter is called out, Mr. A.H. Desai, learned advocate appearing for the petitioner insisted for winding up order of the respondent Company as admittedly an amount of Rs.3 Crores with interest has not been paid by the respondent Company to the petitioner. The defence which was raised in its reply was duly considered by the Court at the time of admission of the petition. Mr. Desai has further submitted that there is no substance in the said reply as the civil suit which was filed by the petitioner against the respondent Company and other parties before the City Civil Court at Ahmedabad has no relevance with the prayer for winding up of the respondent Company made by the petitioner in the present petition, as in that suit, the only prayer which was made by the petitioner was in respect of permanent injunction against the shares whereas in the present case, the petitioner has asked for

winding up of the respondent Company. Mr. Desai has further submitted that the respondent Company has been closed and no business activities are going on. On perusal of the balance-sheets produced by the respondent Company, it is obvious that no business activities has been conducted by the respondent Company. He has, therefore, submitted that it is just and proper to pass the winding up order in the present petition.

9. Mrs. Swati Soparkar, learned advocate appearing for the respondent Company has relied on the affidavit-in-reply filed by the respondent Company. She has, however, submitted that the order could not be complied with as the Company's assurances to make the payment have failed. She has, therefore, submitted that looking to the affidavit-in-reply filed by the respondent Company and looking to the fact that the amount has been disputed, no relief can be granted.

10. After having heard learned advocates appearing for the respective parties and after having gone through the pleadings as contained in the petition, affidavit-in-reply and affidavit-in-rejoinder and also after perusing the relevant documents produced along with the petition, the Court is of the view that there is no dispute about the fact that the petitioner has to recover an amount of Rs. 3 Crore with interest from the respondent Company. The respondent Company has failed to make the said payment. It is also fact that the order passed by this Court earlier directing the respondent Company to make the payment of Rs. 25 Lacs has not been complied with. This fact itself is sufficient to come to the conclusion that the respondent Company has failed and neglected to make the payment to the petitioner. The Balance-sheets which are produced on record also indicate that there are huge liabilities of the respondent Company and the respondent Company is not in a position to

discharge the said liability. The Court is, therefore, of the view that the financial substratum of the respondent Company has gone down and the respondent Company is not in a position to restart its business activities. It is, therefore, not in the interest of public or its Creditors and members to allow such company to function. It is just and proper to wind up the respondent Company. Accordingly, the respondent company is hereby ordered to be wound up. The Official Liquidator attached to this Court is appointed as the Liquidator of the respondent Company and is directed to exercise all powers which are conferred on him under the provisions of Companies Act, 1956. He is further directed to take charge of the assets of the respondent Company after intimating to the Directors as well as Secured Creditors of the respondent Company. He is further directed to inform the petitioner at the time when he deputes his persons to take the possession of the respondent Company. It is,

however, made clear that before deploying any security or the valuer for the purpose of taking inventory, he should take prior permission of this Court. The Official Liquidator shall also ask the Ex-Directors of the respondent Company to file statement of affairs and also invite the claims from the workers as well as the Creditors of the Company.

11. With this directions and observations, this petition is accordingly disposed of as allowed with no order as to costs.

[K.A. PUJ, J.]

Savariya